

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|---|---|------------------------------|
| IN RE | : | CHAPTER 7 |
| | : | |
| GEOFFREY FARRELL ZILBERBERG, | : | CASE NO. 20-68775-PMB |
| | : | |
| Debtor. | : | |
| | : | |
| _____ FINANCIAL SERVICES VEHICLE TRUST, | : | _____ |
| | : | |
| Movant, | : | |
| | : | |
| v. | : | CONTESTED MATTER |
| | : | |
| GEOFFREY FARRELL ZILBERBERG, | : | |
| Debtor; | : | |
| and KATHLEEN STEIL, Trustee, | : | |
| | : | |
| Respondents. | : | |
| | : | |

NOTICE OF HEARING

PLEASE TAKE NOTICE that **Financial Services Vehicle Trust** has filed a Motion for Relief from Automatic Stay and related papers with the Court seeking an order of relief from the Automatic Stay.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion for Relief from Automatic Stay, in Courtroom 1202, The Richard B. Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303 at 1:30 pm on October 5, 2020. Given the current public health crisis, hearings may be telephonic only. Please check the “Important Information Regarding Court Operations During COVID-19 Outbreak” tab at the top of the GANB Website prior to the hearing for instructions on whether to appear in person or by phone.

Your rights may be affected by the Court’s ruling on these pleadings. You should read these pleadings carefully and discuss with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings, or if you want the Court to consider your views, then

you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address for the Clerk's Office is: Clerk, United States Bankruptcy Court, Room 1340, U.S. Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

IF THE MOTION IS FOR RELIEF FROM STAY, and a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consent to the automatic stay remaining in effect until the Court orders otherwise.

Dated: August 17, 2020

Signature: /s/Philip L. Rubin

Philip L. Rubin
5555 Glenridge Connector
Suite 900
Atlanta, Georgia 30342
(404) 869-6900
prubin@lrglaw.com
Bar Number 618525

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| FINANCIAL SERVICES VEHICLE | : | |
| TRUST, | : | |
| | : | |
| Movant, | : | |
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| | : | CONTESTED MATTER |
| v. | : | |
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| GEOFFREY FARRELL ZILBERBERG, | : | |
| Debtor; | : | |
| and KATHLEEN STEIL, Trustee, | : | |
| | : | |
| Respondents. | : | |
| | : | |

MOTION FOR RELIEF FROM AUTOMATIC STAY

NOW COMES FINANCIAL SERVICES VEHICLE TRUST(the "Movant") and moves this Court for relief from the automatic stay and shows the Court as follows:

1.

On August 6, 2020, Geoffrey Farrell Zilberberg ("Debtor") filed a Voluntary Petition pursuant to 11 U.S.C. Chapter 13, and said case converted to Chapter 7, and said case is pending before this Court.

2.

Movant has a claim in this case on a Lease Agreement for a vehicle, to wit: 2016 BMW i8 Series Coupe VIN WBY2Z2C5XGV675450 (the "Vehicle"). The amount remaining on the Lease Agreement is \$126,754.95. The lease matured on December 5, 2019 and the full balance is due. The NADA value of the Collateral is \$58,500.00, and no other collateral securing this loan.

3.

The Lease Agreement is a “true lease” under Georgia law.

4.

Debtors do not have any equity in the Vehicle or the Lease Agreement to benefit the estate and the Trustee's interest should be abandoned. The Vehicle is the only property subject to the Lease Agreement.

5.

Cause exists, including the lack of adequate protection, to grant Movant relief from the automatic stay so as to authorize Movant to exercise its rights in and to the Vehicle.

6.

Movant does not have proof of insurance protecting its interest in the Vehicle or has been advised that there is no insurance in force.

7.

Movant requests that Rule 4001(a)(3) be waived.

WHEREFORE, Movant prays that this Court:

(a) Hold a hearing pursuant to this Motion within thirty (30) days as is required under 11 U.S.C. Section 362(e);

(b) Enter an Order terminating the estate’s interest in the Lease Agreement as herein defined and providing further that the automatic stay, to the extent it restrains Movant from enforcing its rights in and to the Vehicle, be vacated;

- (c) Waive Rule 4001(a)(3); and
- (d) Grant such other and further relief as the Court deems to be just and proper.

This August 17, 2020.

The Law Office of
LEFKOFF, RUBIN, GLEASON & RUSSO, P.C.
Attorneys for Movant

By: /s/ Philip L. Rubin
Philip L. Rubin
Georgia State Bar No. 618525

5555 Glenridge Connector
Suite 900
Atlanta, Georgia 30342
(404) 869-6900
prubin@lrqlaw.com

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| | : | |
| Respondents. | : | |
| | : | |

CERTIFICATE OF SERVICE

The undersigned, Philip L. Rubin, hereby certifies that I am, and at all times hereinafter mentioned, was more than 18 years of age, and that I served the MOTION FOR RELIEF FROM AUTOMATIC STAY and NOTICE OF HEARING on the following parties 1) electronically, if allowed by and pursuant to the requirements of local rule, or 2) by depositing same in the United States Mail in properly addressed envelope(s) with adequate postage to all others, as follows:

Geoffrey Farrell Zilberberg
971 Davis Drive
Atlanta, GA 30327

Kathleen Steil
Chapter 7 Trustee
Ogier, Rothschild & Rosenfeld, P.C.
P.O. Box 1547
Decatur, GA 30031

This August 17, 2020.

The Law Office of
LEFKOFF, RUBIN, GLEASON & RUSSO, P.C.
Attorneys for Movant

By: /s/ Philip L. Rubin
Philip L. Rubin
Georgia State Bar No. 618525

5555 Glenridge Connector
Suite 900
Atlanta, Georgia 30342
(404) 869-6900
prubin@lrqlaw.com

N.A.D.A. Official Used Car Guide Vehicle Valuation

Print Date: August 12, 2020

Vehicle Description: 2016 BMW i8 Series Coupe 2D AWD

VIN: WBY2Z2C5XGV675450

Base Values

Retail: \$ 58500.00

Wholesale/Trade-in: \$ 53275.00

Optional Equipment/Adjustments

Estimated Miles: 62500

\$ 0.00

Total Adjusted N.A.D.A. Used Car Guide Values

Retail: \$ 58500.00

Retail/Wholesale Average: \$ 55887.50

Reference 08/2020 Southeastern

3. **Agreement to Lease.** This Motor Vehicle Lease Agreement ("Lease") is entered into between the lessor and co-lessor ("Lessor") and the lessee ("Lessee") named herein. Unless otherwise specified, "I," "me" and "my" refer to the Lessor and "you" and "your" refer to the Lessee or Lessee's Assignee. "Vehicle" refers to the leased vehicle described below. "Assignee" refers to BMW Financial Services NA, LLC ("BMFNA") or, if this box is checked (X) to Financial Services Vehicle Trust ("FSVT") and administer the Lease on behalf of itself or any Assignee. The consumer lease disclosures contained in this Lease are made on behalf of Lessor and its successors or assignees.

3. Date of Lease, Lease Term and Scheduled Maturity Date. This Lease is entered into on 06 DEC 2018 for the scheduled Lease Term of 36 months with a Scheduled Maturity Date of 05 DEC 2019.

| | | | |
|---|--|--|--|
| 1 AMOUNT DUE AT LEASE ENDING ON DELIVERY | 5 MONTHLY PAYMENTS | 7 OTHER CHARGES Other than finance charges | 6 TOTAL OF PAYMENTS Including amount due at lease ending on delivery |
| | 1. Monthly payment of \$ 1,037.73 on 11/10/00 equivalent to 24 payments of \$ 745.33, beginning on 1/1/01. 2. Finance fee of each month is \$ 1,037.73. 3. Finance charge percentage is 12.00%. | 8 Disposition fee of \$ 200.00 (if the lessee returns the vehicle) 9 N/A 10 N/A TOTAL \$ 350.00 | \$ 54,122.96 |
| 1 10377.73 | | | |

11. Lessee/Owner and User. I may be charged for excessive wear based on your standards for normal use and its damage or because of total miles over scheduled Lease Term of 30,000 miles, at the rate of 30 cents per mile.

12. Purchase Option at End of Lease Term: I have an option to purchase the Vehicle ("V") at the Scheduled Termination of the Lease for the Residual Value of \$ 77,474.00. The purchase option does not include: (1) official fees, such as those for taxes, title, registration and license; and (2) a Purchase Option Fee of \$ 0.00. See Section 20 for more information.

Other Important Terms: See the front and back of this Lease for additional information on early termination, purchase options, and maintenance options. See the warranty, default clauses, Insurance, and any safety interests, if applicable.

| 13. SUMMARY OF GROSS CAPITAL DEFLECTION | | |
|---|-----------|--------------|
| Agreed Upon Value of Properties | 1,322,278 | 82% |
| 100% Title Insurance & Replacement Fee | 0 | 0% |
| Subsequent Tax | 0 | 0% |
| Estimated Lender Tax | 0 | 0% |
| Gain on Tax Capabilities Cost Reduction | 0 | 0% |
| Mortgage Insurance Premium | 0 | 0% |
| Estimated Add Development Premium | 0 | 0% |
| Estimated Warranty | 0 | 0% |
| Provision for Leasehold Improvements | 0 | 0% |
| Pro Delivery Service Charge** | 4,291.00 | 0% |
| | | 100% |
| | | 1,330,569.00 |

* "Lender Share" refers to the amount paid for the lender's share of the loan.

** This charge represents title and profit to be shared for capital costs in respect to the properties, and the selling services and processing documents on the base.

16. ESTIMATED OFFICIAL FEES AND TAXES

\$ 2552.35 This is an estimate of the total amount I agree to pay for official and license fees, registration, title and sales (including personal property taxes) over the 120-day term including any variations of the State. Furthermore, included in my Monthly Payment, Amount Due or License Signing or Renewal Fee is the actual cost of Official Fees and Taxes may be higher or lower, depending on the rate in effect at the value of the Vehicle at the time it is taxed. This estimate is based on my Current Address and may increase if I move or if the rates change. For some of these items, we may invoice you at the billing authority has billed us, sometimes after the sales term expires.

| | | | |
|---|--|--|---|
| 13. OPTIMAL PRICES AND SERVICES | | | |
| <p>I am not required to buy any of the optional products and services listed below. These products and/or services will not be purchased unless I check the appropriate box(es) in the column to the right. These products and/or services are optional and not provided by the State of Georgia. I understand that I may purchase these products and/or services from other sources. I understand that I may purchase these products and/or services from other sources. I understand that I may purchase these products and/or services from other sources.</p> | | | |
| <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Mechanical Services Plan <input checked="" type="checkbox"/> BMW FINANCE PLAN | <p>Price</p> <p><i>R/A</i></p> <p><i>R/A</i></p> <p><i>R/A</i></p> | <p>Term/Duration</p> <p><i>R/A</i></p> <p><i>R/A</i></p> <p><i>R/A</i></p> | <p>Charge</p> <p><i>R/A</i></p> <p><i>R/A</i></p> <p>\$1275.00</p> |
| | | | <p>Estimated Lease Rate</p> |

I, 1900 agree to the Michigan Allowance for the Term of the Lease. My Monthly Payment and Residual Value for this Lease have been calculated in part by the use of the following assumptions:

☐ If this box is checked, I have elected a High Mileage Allowance. I may receive a refund of \$ 100 per year unused miles for the unused miles between 10,000 miles and 15,000 miles, unless the Vehicle is destroyed or stolen. I elect to terminate this Lease early. I purchased the Vehicle at 65% of the refund I am due. Any refund will be received by my amount I owe under the terms of the Schedule Termination.

IN WARRANTIES

The Vehicle is subject to the following limited warranties. If the Vehicle is new, the Vehicle is subject to the standard manufacturer's new vehicle warranty which is also covered by the following. If the Vehicle is used, the Vehicle is subject to the standard manufacturer's used vehicle warranty. If the Vehicle is not a new vehicle.

☐ **UNLESS A WARRANTY IS DISCLOSED ABOVE, LESSON FOR THE EXTENT PERMITTED BY LAW, I AM NOT MAKING ANY WARRANTIES OR REPRESENTATIONS, EITHER EXPRESSED OR IMPLIED, AS TO THE VEHICLE OR ANY OF ITS PARTS OR ACCESSORIES AND I AM MAKING A WARRANTY OF MERCHANTABILITY OR FITNESS OF THE VEHICLE FOR ANY PARTICULAR PURPOSE, INCLUDING THAT I AM A LICENSED DRIVER AND THAT I AM NOT A MINOR.**

17. INSURANCE COVERAGE AND INFORMATION

The valid and collectible liability insurance and personal injury protection of any insured land rental or leasing driver is primary for the leased liability and personal injury protection required by §§ 324.02(1) and 327.06, Florida Statutes.

Insured: James L. Lutz (Type and print name of the Lessee/Lessor/Lessor and its assignee to whom the insurance agency is company, and, if a third insured agency is company, identify any change(s) for the insured insured.)

Policy No. 6115428910

Insurance Company: Florida Casualty Policy No. 6115428910 Coverage: Vehicle Driver Employees' Protection

Agent Name _____ Address _____ Phone No. _____

All matters regarding insurance should be sent by e-mail to insurance@volvo-trucks.com, or faxed to (800) 773-6436

[illegible]

IN THESE BOOKS AND MAGAZINES

THIS IS A LEASE AGREEMENT. THIS IS NOT A PURCHASE AGREEMENT. PLEASE REVIEW THESE MATTERS CAREFULLY AND SEEK INDEPENDENT PROFESSIONAL ADVICE IF YOU HAVE ANY QUESTIONS CONCERNING THIS TRANSACTION. YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT YOU SIGN.

By signing below, you acknowledge that:

- This Lease is completely filled out;
- You have no ownership rights in the Vehicle until you exercise your option to purchase the Vehicle;
- You have read both sides of this Lease carefully and agree to all of its terms; and
- You have received a completely filled-in copy of this Lease.

By (Print Name & Title of Corporation) _____
By (Print Name & Title of Corporation) _____

13. GUARANTEE

I hereby and severally guarantee payment and performance of all promises contained in this Lease. Upon default, Lessor may proceed immediately against me without proceeding against the Lessee. My liability will be unconditional and will not be affected by any settlement, liquidation, reorganization or other action of the Lessee or by operation of law. I assume all responsibility for the performance of the obligations of the Lessee under this Lease and I agree to pay all amounts due to the Lessor.

There is no right or wrong, as assessed by appropriate body you must in any report to protect the University.

| | |
|-----------------------------|-----------------------------|
| Chairman's Signature: _____ | Chairman's Signature: _____ |
| Name _____ | Name _____ |
| Address _____ | Address _____ |

LESSOR'S ACCEPTANCE AND ASSURMENT

Agreement between LARRY and DAVID P.S.
 LARRY Name Larry P. Guter 1st Land of the State of California Signature of DAVID P.S. DAVID P.S.
 1000 (Rev. 10-1)

LEASE 10-f-11

[illegible][illegible][illegible][illegible]

28. **Payments, Late Charge, Returned Payment Charge, Fees, and Traffic Insurance.** If you do not receive my total Monthly Payment within 10 days after it is due, I agree to pay a late charge of \$30 or 5% of the amount of

ENDOWMENT FUND

[illegible]

13. Vehicle Rental. If you purchased the Vehicle, you agree to rent it to the Lessor for the term of the Lease. The Vehicle shall be used only for the purposes stated on the application for credit. You agree to conduct your business in accordance with applicable laws and regulations. You agree to maintain the Vehicle in good condition and to return it to the Lessor in the same condition as when you received it, except for normal wear and tear. You agree to pay for all damages to the Vehicle, including but not limited to, dents, scratches, and paint damage. You agree to pay for all repairs to the Vehicle, including but not limited to, engine, transmission, and brakes. You agree to pay for all insurance, including but not limited to, liability, collision, and comprehensive. You agree to pay for all taxes, including but not limited to, sales tax and registration. You agree to pay for all fees, including but not limited to, processing and administration fees. You agree to pay for all costs, including but not limited to, towing and storage. You agree to pay for all expenses, including but not limited to, fuel and maintenance. You agree to pay for all losses, including but not limited to, theft and vandalism. You agree to pay for all damages to the Vehicle, including but not limited to, dents, scratches, and paint damage. You agree to pay for all repairs to the Vehicle, including but not limited to, engine, transmission, and brakes. You agree to pay for all insurance, including but not limited to, liability, collision, and comprehensive. You agree to pay for all taxes, including but not limited to, sales tax and registration. You agree to pay for all fees, including but not limited to, processing and administration fees. You agree to pay for all costs, including but not limited to, towing and storage. You agree to pay for all expenses, including but not limited to, fuel and maintenance. You agree to pay for all losses, including but not limited to, theft and vandalism.

[illegible]

Option B: I agree to pay the sum of \$15,000 paid due Monthly Payments, plus (a) any other fees and taxes assessed or added in connection with the purchase of the Vehicle and (b) any other fees and taxes assessed or added to my accounts under the Lease or other Leases, and Local and State and Federal Motor Vehicle charges, plus US \$3500 Origination Fee, plus (c) the amount by which the Adjusted Residual Balance (estimated below) exceeds the Residual Value of the Vehicle (determined by the National Automobile Dealers Association (NADA) published under this Option entered which I would have received if I selected Option A, you will meet the difference and any amounts will be added to the balance of the Vehicle.

Under either option, you may assign some or all of my Security Deposit to what I owe and I will remain liable for personal property losses that may be sustained and/or billed after the lease terminates.

SENTENCE INFORMATION

38. **Indemnification.** I agree to indemnify, defend and hold you harmless from all claims, liabilities, suits, losses, damages and expenses (including attorney's fees and court costs) arising out of the condition, maintenance, use, ownership or operation of the Vehicle, including claims made under the strict liability doctrine.

[illegible][illegible]

41. Arbitration Clause

PLEASE REVIEW - IMPORTANT - AFFECTS OUR LEGAL RIGHTS

NOTES: Enter your name, address, and telephone number in the space provided. If you are a member of the American Arbitration Association, please enter your membership number. If you are not a member, please enter your name and address. If you are a member of the American Arbitration Association, please enter your membership number. If you are not a member, please enter your name and address. If you are a member of the American Arbitration Association, please enter your membership number. If you are not a member, please enter your name and address.

[illegible][illegible]

Mail Lien Satisfaction to: Dept of Highway Safety and Motor Vehicles, 600 Krommen Building, Tallahassee, FL 32399-0500

802610

| | | | | | | |
|-----------------------|------|------|------|--------------------------|------------------|--------------|
| Identification Number | Year | Make | Body | WT-L-BHP | Vessel Regs. No. | Title Number |
| WBY2Z2C5XGV675450 | 2016 | BMW | 2D | 3455 | | 125553555 |
| Registered Owner: | | | | Date of Issue 01/04/2017 | | |

FINANCIAL SERVICES VEHICLE TRUST
5550 BRITTON PKWY
HILLIARD OH 43026-7456

Lien Release
Interest in the described vehicle is hereby released
By _____
Title _____
Date _____

IMPORTANT INFORMATION

- When ownership of the vehicle described herein is transferred, the seller **MUST** complete in full the Transfer of Title by Seller section at the bottom of the certificate of title.
- Upon sale of this vehicle, the seller must complete the notice of sale on the reverse side of this form.
- Remove your license plate from the vehicle.
- See the web address below for more information and the appropriate forms required for the purchaser to title and register the vehicle, mobile home or vessel:
<http://www.flhsmv.gov/html/titlindf.html>

Mail To:

12/06/2016
FINANCIAL SERVICES VEHICLE TRUST
5550 BRITTON PKWY
HILLIARD OH 43026-7456

**CERTIFICATE OF TITLE**

| | | | | | | |
|--|-------|---------------|-----------------|---------------|------------------|-----------------|
| Identification Number | Year | Make | Body | WT-L-BHP | Vessel Regs. No. | Title Number |
| WBY2Z2C5XGV675450 | 2016 | BMW | 2D | 3455 | | 125553555 |
| Prev State | Color | Primary Brand | Secondary Brand | No of Brands | Use | Prev Issue Date |
| SIL | | | | | PRIVATE | |
| Odometer Status or Vessel Manufacturer or OH use | | | | Hull Material | Prop | Date of Issue |
| 60 MILES 12/06/2016 ACTUAL | | | | | | 01/04/2017 |

Registered Owner

FINANCIAL SERVICES VEHICLE TRUST
5550 BRITTON PKWY
HILLIARD OH 43026-7456

1st Lienholder

12/06/2016
FINANCIAL SERVICES VEHICLE TRUST
5550 BRITTON PKWY
HILLIARD OH 43026-7456

DIVISION OF MOTORIST SERVICES

TALLAHASSEE

FLORIDA

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

Robert R. Kymoch
Director

Control Number

14C893615

Terry L. Rhodes
Executive Director

TRANSFER OF TITLE BY SELLER (This section must be completed at the time of sale.)

Federal and/or state law require that the seller state the mileage, purchaser's name, selling price and date sold in connection with the transfer of ownership.
Failure to complete or providing a false statement may result in fines and/or imprisonment.

This title is warranted to be free from any liens except as noted on the face of the certificate and the motor vehicle or vessel described is hereby transferred to:

Seller Must Enter Purchaser's Name: _____ Address: _____
Seller Must Enter Selling Price: _____ Seller Must Enter Date Sold: _____
[We state that this ☐ 5 or ☐ 6 digit odometer now reads ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 0 (no tenths) miles, date read _____ and I hereby certify that to the best of my knowledge the odometer reading:
☐ 1. reflects ACTUAL MILEAGE ☐ 2. is IN EXCESS OF ITS MECHANICAL LIMITS ☐ 3. NOT THE ACTUAL MILEAGE.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE.

SELLER Must Sign Here: _____ CO-SELLER Must Sign Here: _____
Print Here: _____ Print Here: _____
Selling Dealer's License Number: _____ Tax No.: _____ Tax Collected: _____
Auction Name: _____ License Number: _____

PURCHASER Must Sign Here: _____ CO-PURCHASER Must Sign Here: _____
Print Here: _____ Print Here: _____

NOTICE: PENALTY IS REQUIRED BY LAW IF NOT SUBMITTED FOR TRANSFER WITHIN 30 DAYS AFTER DATE OF PURCHASE